

# BOARD CERTIFICATION IN APPELLATE PRACTICE: A Rewarding Endeavor

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The Florida Bar Board of Legal Specialization and Education is charged with the serious undertaking of certifying members of the Bar as specialists in particular practice areas. Currently there are 22 different specialty areas, including Appellate Practice. Achieving board certification is a remarkable professional achievement that is an objective indication of a lawyer's knowledge, skills, experience and ethics. Only lawyers who have been certified by the Florida Bar can market themselves as "experts" or "specialists" in a particular area of practice.

Appellate Practice has been a recognized specialty since 1993. Certified appellate specialists are a relatively rare group, currently numbering only 154 members of the Florida Bar. By comparison, there are 1,098 Florida lawyers currently certified in Civil Trial Practice.

In order to obtain certification, you must demonstrate special competence and experience in the area of appellate practice. This is demonstrated through a lengthy and detailed application process involving review of your appellate work product and practice history, judicial and peer review, and a substantive examination.

As a threshold matter, you must have been practicing law for a minimum of five years, and you must have had primary responsibility for the preparation of the briefs in at least 25 appellate matters, and participated in at least five oral arguments. You must also demonstrate that you are engaged in appellate practice for at least 30% of your professional time within the three years preceding the application.

The quality of your appellate advocacy is also gauged by the Committee. You must submit a copy of your briefs from your last two appellate matters. This is an interesting requirement because it prevents you from picking and choosing your best work product over your career. Your performance is

further evaluated through peer review. You are required to submit at least six professional references, including two appellate judges. Each of your references are sent detailed questionnaires regarding their knowledge of your appellate skills, work history and ethics. The Committee may also expand the peer review beyond the named references.

Appellate certification also requires 45 hours of Continuing Legal Education (CLE) credits in the three years preceding the application. These courses have to be offered at an intermediate or advanced level on appellate topics—so not all CLE counts. The Bar staff is very helpful in this regard, and will work with you to ensure you can meet this requirement, but it takes some effort to accumulate the right courses within the three year timeframe. When you are a year or two from applying, it is good advice to begin taking all the advanced appellate CLE that you can find. Although it is not technically required, nearly everyone seeking certification attends the Board Certification Exam Review Course offered by the Florida Bar once a year in late January or early February. This course occurs too late to be considered part of your required CLE in the year you are applying for certification, but it is an excellent review for the final hurdle—the certification exam.

Once your application is accepted and approved by the Committee, you must sit for the certification exam. The exam is administered over the course of a full day, and consists of multiple choice and short and long essay questions. The exam covers the full range of appellate knowledge, including civil, criminal, and administrative appeals, in both state and federal court. Many applicants for certification find a need to learn the specifics of appellate practice in areas they do not normally practice to properly prepare for the exam. Even a commercial appellate lawyer needs to be prepared to discuss criminal appeals and issues relating to post-conviction relief in an essay question! The official pass ratio for the 2007 exam was 57%.

If you obtain a passing score on the exam, you have achieved board certification, and have the right to call yourself an appellate specialist. You may then advertise your expertise, and you may include the Florida Bar's board certification artwork in your marketing materials. The Bar also offers a variety of marketing materials for certified lawyers, such as handouts that explain the meaning of board certification to help educate prospective clients. Board certified lawyers are also listed separately in the Florida Bar Journal directory issue, and on the Florida Bar's website, so other lawyers can easily identify appellate specialists. This objective indication of your special competence helps to distinguish you from other members of the Bar, and can be an excellent marketing tool.

Keep in mind, however, that the application process is very involved, and it can take several years of planning to be prepared to meet all of the various requirements. Even the process of filling out the application is extremely time consuming because it requires the compilation of large amounts of historical data about your appellate cases. As a first step, you need to download the application and related rules and instructions from the Florida Bar's website to fully familiarize yourself with the application process.

My informal poll of board certified appellate specialists confirms that obtaining board certification is well worth the effort. In fact, the practitioners I interviewed all spoke very highly of the process, and believed that the experience of applying for certification, undertaking the intense CLE requirements, and studying for the certification exam, made them better appellate lawyers. If you are serious about concentrating your professional time in appellate practice, I strongly recommend working toward board certification.

## (Endnotes)

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